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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PERFECT 10, INC., a California  
corporation,

Plaintiff,

v.

YANDEX N.V., a Netherlands limited  
liability company; and DOES 1 through  
100, inclusive,

Defendants.

CASE NO. CV 12 1521 WHA

**DECLARATION OF DR. NORMAN  
ZADA IN SUPPORT OF PERFECT  
10'S MOTION FOR PRELIMINARY  
INJUNCTION AGAINST DEFENDANT  
YANDEX, N.V.**

DATE: May 10, 2012

TIME: 2:00 p.m.

CTRM: 8

JUDGE: William Alsup

**DECLARATION OF DR. NORMAN ZADA**

I, Norman Zada, declare as follows:

1. I make this declaration in support of Plaintiff Perfect 10, Inc.’s (“Perfect 10”) motion for preliminary injunction. Except where otherwise stated, I have direct and personal knowledge of the facts set forth herein and, if called as a witness, could and would competently testify thereto. I have spent at least 50 hours downloading Perfect 10 copyrighted images (“P10 Images”) using Yandex.ru and Yandex.com. In case the Court wishes to make a determination as to whether Perfect 10 owns valid copyrights, I will occasionally refer, for illustrative purposes, to a sample of 10 images (*“The Sample”*) ***which are described in the Declaration of Melanie Poblete (“Poblete Decl.”), as well as in this declaration.*** A copy of each image in “The Sample” is contained in Exhibit 1 (the disk), along with information for each image, including the copyright registration and deposit material that covers each of the images. Perfect 10 owns the copyright for each of the 10 images in The Sample. The deposit material for each of the ten sample images consists in most cases of the complete Perfect 10 magazine in which that image appeared. I have included in Exhibit 1 (the disk) in a subfolder of “The Sample” folder, labeled “Copyright Certificates,” certificates obtained from the Copyright Office which cover many other images appearing in exhibits attached to this declaration. Those certificates cover each and every Perfect 10 Magazine, the Perfect 10 website, and many other registrations. I have also included in Exhibit 1, in a subfolder of “The Sample” folder, labeled “Deposit Materials,” all of the other deposit materials covering each Perfect 10 copyrighted image in each issue of Perfect 10 Magazine. So in total, I have attached to this declaration deposit materials which cover at least 4,000 P10 Images. I have also included work for hire and/or assignment of rights agreements in “The Sample” folder, in a subfolder entitled “Work Made for Hires and AoRs.” In total, Perfect 10’s deposit materials at the Copyright Office are very massive and would require a large number of DVDs to be filed with the Court. Should the Court wish to see more such deposits,

1 they will be made available at the Court's request. Perfect 10 owns the copyright for  
2 all images referred to hereinafter as "P10 Images".

3 **PROFESSIONAL BACKGROUND AND WORK DONE FOR THIS**  
4 **DECLARATION**

5 2. I am President of Plaintiff Perfect 10, Inc. ("Perfect 10"). After receiving  
6 a Ph.D. in Operations Research from the University of California at Berkeley, I  
7 worked as a research staff member in the main computer science department at IBM,  
8 and subsequently taught as a visiting professor in the area of applied mathematics at  
9 Stanford University, UCLA, Columbia University, and UC Irvine. I have programmed  
10 computers for at least twenty years. I have been involved in every aspect of this case  
11 and, if called as a witness, could and would competently testify thereto.

12 3. The Exhibits attached hereto, except where otherwise noted, fall into one  
13 of the following categories: (a) true and correct copies of documents that I have  
14 downloaded as Adobe PDF files from the Internet – I have personally downloaded  
15 each and every one of the Adobe files attached to this declaration as printed exhibits;  
16 (b) true and correct copies of snapshots of my computer screen, which I captured using  
17 the program "snagit"; (c) true and correct copies of DMCA notices that I sent to  
18 Yandex or to other Internet Service Providers; (d) true and correct copies of files that  
19 contain deposit materials and copyright certificates for P10 Images, registered with the  
20 U.S. Copyright Office; and (e) true and correct copies of Work Made for  
21 Hire/Assignment of Rights Agreements between Perfect 10 and the photographers for  
22 images in "The Sample," as well as most Perfect 10 Images. Exhibits reflecting dates  
23 contain the correct date the document was downloaded, captured and/or saved, and,  
24 when applicable, the URL of the webpage. I have added green check marks or  
25 highlighting to some exhibits so that the Court may more readily locate relevant  
26 information contained in those exhibits. I will use the terms "P10" and "Perfect 10"  
27 interchangeably to denote Perfect 10 copyrighted images.

28 4. Perfect 10 owns the copyrights for all of the P10 Images described as such

1 in this declaration, including the 10 P10 Images that will be used as a sample for  
2 Perfect 10's motion. During the last 14 years, Perfect 10 has created more than  
3 20,000 copyrighted photographs of female models and has purchased additional  
4 images, at a cost of millions of dollars. Perfect 10 owns the copyrights for more than  
5 48,000 images, in total. Perfect 10 also owns registered trademarks for "Perfect 10"  
6 and for "P10." Perfect 10 derives all of its revenue, directly or indirectly, from its  
7 images. From 1997 through June 2007, Perfect 10 published the well-known  
8 magazine "PERFECT 10." The magazine contains high-quality, nude or partially nude  
9 photographs, of beautiful "natural" models such as Sports Illustrated swimsuit cover  
10 model/Victoria's Secret model Marisa Miller. After losing more than \$50 million  
11 because of rampant infringement, Perfect 10 was forced to cease production of its  
12 flagship magazine in June 2007 and lay off key employees. Perfect 10 continues to  
13 sell back issues of its magazine and run its website, [www.perfect10.com](http://www.perfect10.com). Consumers  
14 may view more than 20,000 Perfect 10 Images as well as several videos on the website  
15 through an individual, confidential password by paying a monthly fee of \$25.50. The  
16 images are arranged alphabetically by model name so that the images of any particular  
17 model can be readily located. As a result of uncontrollable infringement, Perfect 10's  
18 revenues have declined from close to \$2,000,000 a year to less than \$100,000 a year.  
19 Perfect 10 is very close to bankruptcy. If yandex.ru is allowed to continue to distribute  
20 thousands of P10 Images to its users, countless additional websites in Russia and  
21 elsewhere, beyond the reach of U.S. Courts, will be able to readily obtain those images  
22 from Yandex. The damage to Perfect 10 will be enormous. The success of Perfect  
23 10's business is entirely dependent on its intellectual property, which must be  
24 protected for Perfect 10 to survive.

25 5. Perfect 10 has spent a great deal of time and energy, over the past ten  
26 years, attempting to protect its intellectual property through litigation. We have filed  
27 at least twenty separate lawsuits, against a variety of different infringers. When  
28 Perfect 10 received a preliminary injunction against Cybernet Ventures in 2002, that

1 injunction affected not only Cybernet Ventures, but the other infringers who were  
2 operating similar business models. At that time, the websites of the main infringing  
3 adult verification services were adultcheck.com (operated by Cybernet Ventures),  
4 cyberage.com, sexkey.com, and freenetpass.com. Attached as page 1 of Exhibit 2 is  
5 the result of a Google search on adultcheck.com. I have examined the two listings.  
6 The website appears to be no longer operating. Attached as pages 2-4 of Exhibit 2 are  
7 the pages I was able to screen capture from freenetpass.com. That website appears to  
8 be no longer functioning as well. I have examined both sexkey.com and  
9 cyberage.com. Both websites appear to be using only licensed material.

10 6. There are currently at least two other Russian search engines, mail.ru, and  
11 rambler.ru, that are refusing to process Perfect 10 DMCA notices. I believe that they  
12 would process such notices and remove infringing Perfect 10 materials from their  
13 search results, if Perfect 10 obtained an injunction against Yandex.

14 7. Perfect 10 always attempts to settle cases. My experience is that the  
15 monetary settlements that we have made, have in total, been approximately equal to  
16 the attorney's fees we have expended. When the time and energy that I and other  
17 employees have been forced to spend is included, Perfect 10 has not recovered  
18 anything. In other words, it is absolutely imperative that Perfect 10 receive an  
19 injunction to protect its business.

#### 20 **SAMPLE DMCA NOTICES SENT TO YANDEX**

21 8. Attached as Exhibit 3 is a printscreen of a page from the website  
22 copyright.gov where the U.S. Copyright Office identifies DMCA agents registered by  
23 online service providers. There is no listing for Yandex.

24 9. Perfect 10 has sent to Yandex, at least 72 DMCA notices, beginning on  
25 October 14, 2011. These notices have identified at least 20,000 P10 Images that  
26 Yandex copies, displays, links to, and/or places Yandex ads around. Attached as  
27 Exhibit 4 is a portion of a DMCA notice that I sent to Yandex on October 14, 2011.  
28 The full notice is contained in Exhibit 1, in a folder labeled "DMCA Notices." The

1 notice explained that all of the images of models that were not covered up were  
2 copyrighted by Perfect 10. I also stated, "Perfect 10 has exclusive rights to all of the  
3 images identified in this notice. No one else is authorized to make copies of any size  
4 of images identified as being infringed in this notice. Under no circumstances does  
5 yandex.ru have Perfect 10's permission to make copies of such identified Perfect 10  
6 images of any size or places ads around them." I also stated, "More generally, please  
7 stop copying or displaying all copies of any size of any image that displays a Perfect  
8 10 copyright notice." I obtained pages 4-5 of Exhibit 4 by doing a Yandex Image  
9 search on "Zita Gorocs." Each of the images on pages 4-5 of Exhibit 4 are copyrighted  
10 by Perfect 10. I obtained page 6 of Exhibit 4, which displays a full-size P10 Image of  
11 Zita Gorocs, by clicking on the Yandex created thumbnail with the "1" in a text box  
12 next to it on page 5 of Exhibit 4. I obtained page 7 of Exhibit 4, by clicking on the  
13 Yandex created thumbnail with the "2" in a text box next to it on page 5 of Exhibit 4.  
14 Pages 8 and 9 contain examples of the authorized images from perfect10.com.

15 10. Attached as Exhibit 5 is a portion of a DMCA notice that I sent to Yandex  
16 on October 15, 2011. The full notice is contained in Exhibit 1, in a folder labeled  
17 "DMCA Notices." The notice explained that all of the images of models that were not  
18 covered up were copyrighted by Perfect 10. I obtained page 4 of Exhibit 5 by doing a  
19 Yandex Image search on "Isabelle Funaro topless." I obtained page 5 of Exhibit 5 by  
20 clicking on the thumbnail with the red arrow on page 4 of Exhibit 5. I obtained page 6  
21 of Exhibit 5, by clicking on the link next to the red arrow on page 5 of Exhibit 5. Page  
22 6 of Exhibit 5 provided me with different sized versions of that same image from  
23 different infringing websites. Yandex provides links on the right side of page 6 of  
24 Exhibit 5, which when clicked on, would take the user to a page of that website  
25 containing a similar infringing image, typically of a larger size. Pages 7-8 contain  
26 examples of the authorized images from perfect10.com.

27 11. Attached as Exhibit 6 is a portion of a DMCA notice that I sent to Yandex  
28 on October 15, 2011. The full notice is contained in Exhibit 1, in a folder labeled

1 “DMCA Notices.” The notice explained that all of the images of models that were not  
2 covered up were copyrighted by Perfect 10. I obtained page 5 of Exhibit 6 by clicking  
3 on the thumbnail with the red arrow on page 4 of Exhibit 5. I obtained pages 6 -12 of  
4 Exhibit 6 by clicking on the link next to the red arrow on page 5 of Exhibit 6. That  
5 link provided me with different sized versions of that same image from different  
6 infringing websites. This Exhibit 6, together with Exhibit 5, demonstrate that Yandex  
7 has a significant image recognition capability, which it could use to remove such  
8 images from its system, but chooses not to. Page 13 contains examples of authorized  
9 images from perfect10.com. On pages 6-12 of Exhibit 6, Yandex provides links to the  
10 following websites: photo.sibnet.ru, uaix.ru, ero.od.ua, golieznamenitosty.ru,  
11 fanlokonn.nnover.ru, topdesktop.ru, altfast.ru, viktors.narod.ru, wpps.ru,  
12 hobbies.metroland.ru, eternium.ru, krestikprof.ru, dima-amid.narod.ru, styles.org.ru,  
13 webzona.ru, pixant.ru, uralweb.ru, bufera.ru, lifemoment.ru, tiki.ucoz.ru, sholc-  
14 soft.at.ua, wizardworld.ucoz.ru, inym.ru, zastavka.ucoz.ru, alleya.ru, st-  
15 pc.mylivepage.ru, gee.ru, wapinet.ru, aswed.mylivepage.ru, best-volok.mylivepage.ru,  
16 and new.friwap.ru. It is my understanding that websites that end in “.ru” or “.ua” are  
17 based in Russia.

18 12. Attached as Exhibit 7 is a portion of a DMCA notice that I sent to Yandex  
19 on October 23, 2011. The full notice is contained in Exhibit 1, in a folder labeled  
20 “DMCA Notices.” The notice explained that all of the images of models that were not  
21 covered up were copyrighted by Perfect 10. On pages 4-6 of Exhibit 7, Yandex  
22 provides links to the websites pokazuha.ru, sex-tape.ru, spotsmenki.mybb.ru,  
23 celebsdigest.in.ua, and ymorno.ru.

24 13. Attached as Exhibit 8 is a portion of a DMCA notice that I sent to Yandex  
25 on January 12, 2012. The full notice is contained in Exhibit 1, in a folder labeled  
26 “DMCA notices.” The notice explained that all of the images of models that were not  
27 covered up were copyrighted by Perfect 10. Pages 4-11 contain 50 infringing copies  
28 of the same P10 Image, which Yandex links to multiple different infringing websites

1 that offer more infringing P10 Images. Pages 14-18 contain 30 copies of the same  
2 infringing P10 Image. Pages 21-32 contain 94 copies of the same infringing P10  
3 Image. Pages 35-39 contain examples of authorized images from perfect10.com.

4 14. Attached as Exhibit 9 is a portion of a DMCA notice that I sent to Yandex  
5 on January 27, 2012. The full notice is contained in Exhibit 1, in a folder labeled  
6 “DMCA Notices.” The URLs in the browser bars at the top of pages 9-10 of Exhibit 8,  
7 contain the domain fotki.yandex.ru. This means that these pages are hosted on  
8 yandex.ru servers. Attached as page 11 is a screen capture showing the location of the  
9 infringing image shown on page 9 of Exhibit 9.

10 15. Attached as Exhibit 10 is a portion of a DMCA notice that I sent to  
11 Yandex on January 27, 2012. The full notice is contained in Exhibit 1, in a folder  
12 labeled “DMCA notices.” I obtained pages 6-9 of Exhibit 10, by clicking on the  
13 Yandex link pointed to by the red arrow shown on page 5 of Exhibit 10. Pages 6-9 of  
14 Exhibit 10 offer images and links to thousands of P10 Images. Page 2 of Exhibit 10  
15 states, “Please stop providing unauthorized username/password combinations to  
16 perfect10.com. Such unauthorized username/password combinations are typically of  
17 the form username:password@members.perfect10.com, such as  
18 qmeshawn.jetpilot@members.perfect10.com (See last three pages of notice).” Pages  
19 12-13 of Exhibit 10 show unauthorized username/password combinations to  
20 perfect10.com provided by Yandex. There have been more than 4.5 million  
21 unauthorized downloads of full-size P10 Images from perfect10.com as a result of the  
22 such unauthorized username/password combinations.

23 16. Attached as Exhibit 11 is a portion of a DMCA notice that I sent to  
24 Yandex on January 7, 2012. The full notice is contained in Exhibit 1, in a folder  
25 labeled “DMCA notices.” Pages 4-5 of Exhibit 11 contain some of the 424 infringing  
26 copies of the same infringing P10 Image that Yandex makes available to its users, and  
27 which it links to infringing websites that offer more infringing P10 Images (see red  
28 arrow on page 5, showing that there are 424 copies of the same infringing P10 Image

1 offered by Yandex to its users, which Yandex links to hundreds of different infringing  
2 websites). I placed green check marks by infringing links in Yandex web search  
3 results on pages 6-7 of Exhibit 11. Pages 8-14 of Exhibit 11, provide examples of  
4 infringing P10 Images on webpages that Yandex provides direct links to on pages 6-7  
5 of Exhibit 11. Pages 15-16 of Exhibit 11 list Yandex Web Search links that lead to  
6 portions of Perfect 10 DMCA notices, which in many cases contain live P10 Images  
7 and links to more infringing P10 Images. Pages 17-24 of Exhibit 11 are examples of  
8 infringing images from Perfect 10's DMCA notices that Yandex provides direct links  
9 to. My DMCA notice asked Yandex to remove those direct links. By providing links  
10 to the live images and links in Perfect 10 DMCA notices as shown on page 16, Yandex  
11 allows its users to readily view and download more than 30,000 infringing P10 Images  
12 from this act alone.

13 17. Attached as Exhibit 12 are examples of P10 Images hosted on Yandex's  
14 servers. Exhibit 12 is not a DMCA notice by itself, but rather, is comprised of pages  
15 of infringing Perfect 10 images that were attached to various Perfect 10 DMCA  
16 notices. Page 1 of Exhibit 12 was attached to Perfect 10's January 28, 2012 notice on  
17 page 25 of that notice. See Exhibit 1 (the disk) in the folder "DMCA Notices", the file  
18 entitled "2012-1-28\_DMCA Notice – Vibe Sorenson"). Pages 2-3 of Exhibit 12 were  
19 attached to Perfect 10's third DMCA notice sent to Yandex on February 11, 2012  
20 DMCA notice. Pages 4-9 of Exhibit 12 were attached as part of Perfect 10's January  
21 10, 2012 notice on pages 136-161 of that notice (located in the disk Exhibit 1, folder  
22 "DMCA Notices", file entitled "2012-1-10\_DMCA Notice – Aria Skins Veronika  
23 Petolka"). All of the thumbnails on pages 5-9 of Exhibit 12, when clicked upon, take  
24 the user to a full size image hosted on yandex.ru, with Yandex ads at the bottom of the  
25 image. Attached as page 10 of Exhibit 12 is a page I printed on February 9, 2012 after  
26 clicking on one such thumbnail. I have placed in Exhibit 1 (the disk), in a folder  
27 labeled "hosted on Yandex servers," examples of many more full-size P10 Images  
28 hosted on Yandex servers, with Yandex ads next to such images. Perfect 10's DMCA

1 notices have identified hundreds of P10 Images hosted on Yandex servers with Yandex  
2 ads, which Yandex has not removed.

3 **YANDEX'S RESPONSE**

4 18. Attached as Exhibit 13 are five communications that I received from  
5 Yandex or lawyers for Yandex, on November 11, 2011, January 18, 2012, January 25,  
6 2012, February 10, 2012, and February 14, 2012.

7 19. Twenty-five different Internet Service providers have processed Perfect  
8 10's DMCA notices, including Yahoo.com and Ask.com. Attached as pages 1-5 of  
9 Exhibit 14 is a notice that I sent to Yahoo on July 26, 2010, similar to notices which I  
10 sent to Yandex. Page 6, printed on July 30, 2010, shows that Yahoo removed the  
11 identified images within four days of receiving my notice.


12 20. Attached as Exhibit 15 is an alexa.com printout showing that Yandex.ru is  
13 the 22<sup>nd</sup> most visited website on the Internet.

14 21. Attached as Exhibit 16 is a printout showing that Yandex is still providing  
15 over 700,000 links to the website thepiratebay.org, even though its operators were  
16 convicted of criminal copyright infringement.

17 22. Attached as Exhibit 17 release from judiciary.house.gov. It states,  
18 "Unfortunately, the theft of America's intellectual property costs the U.S. economy  
19 more than \$100 billion annually and results in the loss of thousands of American jobs.

20 23. In 2006, when Perfect 10 received a preliminary injunction against  
21 Google, there were approximately 2,500 P10 Images available in Google's Image  
22 search. Yandex is currently providing well over 15,000 P10 Images in its Image  
23 Search results.

24 I declare under penalty of perjury under the laws of the United States of  
25 America that the foregoing is true and correct to the best of my knowledge. Executed  
26 this 30th day of March 2012 in San Diego, California.

27   
28 NORMAN ZADA